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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,368	12/31/2003	Paul T. Van Gompel	19,446	1176
23556	7590	12/15/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/749,368	Applicant(s) VAN GOMPEL ET AL.
	Examiner Laura C. Hill	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 Oct 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-64 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-64 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 31 December 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>5/27/8/16 & 9/21/05</u> .	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/749,368

EXAMINER

ART UNIT	PAPER
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20051207

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

DETAILED ACTION

Drawings

1. The objection to the drawings has been removed in response to Applicant's arguments.

Claim Objections

2. All claim objections have been removed pursuant to Applicant's amendments

Response to Arguments

3. Applicant's arguments, see pages 17-21 of Arguments, filed 12 October 2005, with respect to the rejection(s) of claim(s) 1-6, 8-11, 13-21, 43-48, 50-53, and 55-64 under Freeland, claims 1, 3, 12 and 54 under Blenke et al., claims 22-27 and 29-42 under Freeland in view of Blenke, claims 7 and 49 under Freeland in view of Sauer have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection of claims 1-6, 8-14, 17-27, 29-35, 39-48, 50-56, and 59-64 is made over Blenke et al. (US 6,129,720) in view of Heindel et al. (US 6,428,526), claims 7, 28 and 49 is made under Blenke et al. (US 6,129,720) in view of Heindel et al. (US 6,428,526), and further in view of Sauer (US 5,957,907), claims 15-16, 36-37, and 57-58 is made under Blenke et al. (US 6,129,720) in view of Heindel et al. (US 6,428,526), and further in view of Freeland (US 4,990,147) as discussed below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-6, 8-14, 17-27, 29-35, 39-48, 50-56, and 59-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blenke et al. (US 6,129,720; herein 'Blenke') in view of Heindel et al. (US 6,428,526; herein 'Heindel'). Regarding claims 1, 3, 22, 24, 43, and 45 Blenke discloses absorbent article 8 with outer layer 26 secured to the perimeter of extensible body side liner/elastic inner layer 24 (column 4, lines 19 and line 66-column 5, line 3), fastening tabs 20, 22 (column 4, lines 25-27) and an elastic body side liner/inner layer 24 defining a waist opening (column 5, lines 15-17). Blenke further discloses fastening tabs 20, 22 can comprise hook fasteners for securing rear portion 14 of absorbent article 8 to looped material at front portion 10 (column 6, lines 51-54). Blenke *does not expressly disclose* a fastener adapted to engage into the elastic inner layer in the back waist region and another fastener adapted to engage into the outer surface of the outer layer in the front waist region. **Heindel** discloses disposable diaper 20 (column 4, lines 20-23) with first fastening hook element 40 attached into the body side liner/inner layer 24 to the rear waist region and the second fastening loop material 42 will be attached to the outer surface near the front waist region such that the mechanical fasteners can be protected prior to use and can attach the diaper about the waist of the wearer (column 6, lines 50-63, figures 2-3). One would be motivated to modify the fastener of Blenke with the fasteners engaging the inner and outer layers of

Heindel to provide a fastening mechanism to encircle the disposable garment about the wearer's waist since both references are in the same field of endeavor; disposable absorbent wearing garments with fastening means. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the fastener, thus providing a fastener adapted to engage into the elastic inner layer in the back waist region and a fastener adapted to engage into the outer surface of the outer layer in the front waist region.

Regarding claims 2, 14, 23, 35, 44, and 56 Blenke discloses a pattern of adhesive 66 is disposed on inner surface 64 of outer cover 26 to secure outer cover 26 to elastic body side/inner liner layer 24 (column 5, lines 1-3).

Regarding claims 4, 25 and 46 Blenke discloses outer layer 26 does not break in response to forces during normal use and thus is elastic (column 5, lines 50-64).

Regarding claims 5, 26 and 47 Blenke discloses outer layer 26 is liquid impermeable (column 8, lines 50-53).

Regarding claims 6, 27 and 48 Blenke discloses alternative constructions of outer cover layer 26 has levels of liquid impermeability to select regions and thus has levels of liquid permeability (column 8, lines 43-48).

Regarding claims 8-10, 29-31, and 50-52 Blenke discloses outer cover 26 can extend in both the longitudinal and cross/lateral directions (column 12, lines 58-60).

Regarding claims 11-12, 32-33 and 53-54 Blenke discloses the body side liner/elastic inner layer 24 is liquid impermeable/nonwettable (column 7, lines 30-32) and comprises a stretch-bonded two-layered composite (column 7, lines 60-66).

Regarding claims 13, 17, 19-20, 34, 38, 40-41, 55, 59, and 61-62 Blenke/Heindel do not expressly disclose opening length percentage, crotch-to-fastener angle, or front center panel length values. The aforementioned values are result effective variables since they are at least a result of the overall article size and the intended wearer size. It would therefore have been obvious to one having ordinary skill in the art at the time the invention was made to modify the opening of Blenke/Heindel with opening length percentage, crotch-to-fastener angle, and front center panel length values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claims 18, 39 and 60 Blenke discloses the inner body side liner 24 and outer cover 26 both have an extensibility of 30-200% in the cross direction (column 8, lines 10-15 and lines 58-67) and therefore the retraction value of the outer layer can be less or greater than that of the inner layer.

Regarding claims 21, 42, and 63 Blenke does not expressly disclose the front waist region fastener is less than a front center panel length. **Heindel** discloses absorbent core 26, which contains a front center panel region, is longer than region that contains front waist region fastener 42 (figure 1).

Regarding claim 64 Blenke discloses the opening length and percentage-bonded area as discussed above with respect to claims 1, 13, and 17.

2. Claims 7, 28 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heindel et al. (US 6,428,526) in view of Blenke et al. (US 6,129,720), and further in

view of Sauer (US 5,957,907; herein 'Sauer'). Heindel/Blenke do not expressly disclose the outer layer has one or more pleats. **Sauer** discloses disposable diaper 20 with impermeable outer cover 32, elastic liquid permeable body side liner 34, and an opening 60 in elastic liner 34 to receive fecal exudates and isolate a portion of the exudates from the wearer's skin (col. 3, line 56, col. 4, ll. 8-16, col. 10, ll. 65-67). Sauer further discloses outer cover 32 may be pleated/embossed or otherwise provided with a matte finish to provide a more aesthetically pleasing appearance (col. 6, line 67-col. 7, line 2). One would be motivated to modify the outer cover of Blenke/Heindel with the pleated outer cover of Sauer to provide a more aesthetically pleasing appearance since all references are in the same field of endeavor; disposable articles with fasteners that absorb bodily wastes. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the outer cover, thus providing an outer layer having one or more pleats.

3. Claims 15-16, 36-37, and 57-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blenke et al. (US 6,129,720; herein 'Blenke') in view of Heindel et al. (US 6,428,526; herein 'Heindel'), and further in view of Freeland (US 4,990,147; herein 'Freeland'). Blenke/Heindel do not expressly disclose non-coextensive inner and outer layers. **Freeland** discloses disposable diaper 10 comprising an elastic liner/inner layer 12, wherein the elastic liner/inner layer 12 has inner and outer surfaces and a perimeter and wherein the elastic liner/inner layer 12 defines passageway 22 with an aperture/opening for communication of waste materials and located in a position to the inner layer perimeter (column 3, lines 55-58, column 4, lines 43-49, figure 1); wherein

the elastic liner/inner layer 12 is partially and preferably fully peripherally affixed to outer layer/back sheet 14 (column 2, lines 34-35); and wherein the inner surface of elastic inner layer 12 in the back waist region includes front and back ear portion areas with fasteners 42 that allows the diaper 10 to conform to the wearer (column 5, lines 44-46, figure 1). Freeland further discloses by making the liner/inner layer 12 shorter and smaller than the back sheet/outer layer 14, the diaper 10 will bow concave towards the liner 12, creating a frame suitable to accommodate the arcuate posterior of the wearer (column 5, lines 10-14). One would be motivated to modify the article of Blenke/Heindel with the shorter and smaller elastic inner layer to provide a diaper that will accommodate a user since all references disclose disposable absorbent wearing articles with fasteners. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article, thus providing a shorter and smaller inner elastic liner.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

J.C. Hill

Tatyana Zalukaeva